

## REMARKS/ARGUMENT

Applicant – through the assignee of this technology/application – has given careful consideration to the grounds of the examiner in:

(I) rejecting claims 24-25 under 35 USC §112 concerning use the word “knitted” fabric vs. “woven” fabric, a rejection only first (now) raised on 20 July 2010 for text recited in applicant’s first wave of claim amendments made in 18 June 2009 (presented as new claims 24 and 25) which were examined in early January 2010 and for which a final Office action was issued with no such mention of an 35 USC §112 rejection;

(II) rejecting many claims under 35 USC §112 for use of the phrase “a plurality of elasticized pieces” and reciting use of a “first” thereof, without setting forth specifications concerning structural cooperative relationships of the “non-first elasticized” pieces and the garments;

(III) rejecting several claims under 35 USC §102(b) using a new reference, Daoud et al U.S. Pat. 5,144,694 (not cited by the examiner earlier) disclosing a vest and shorts having pockets to hold exercise weight packets;

(VI) rejecting a few claims under 35 USC §103(a) using Daoud et al U.S. Pat. 5,144,694, in view of another reference not cited earlier, Bracken, U.S. Pat 5,561,932, disclosing sizing indicia that provides finished sizes for pants; and

(V) rejecting a several claims under 35 USC §103(a) using Daoud et al U.S. Pat. 5,144,694, in view of an earlier-cited reference, Phillips, Sr. et al, U.S. Pat. 4,843,647 directed to a baggy cold weather shirt.

Each amendment made herein has been made for purposes of clarification of the subject matter sought to be patented, as originally filed in the PCT International application and for which national U.S. entry was made. All amendments enjoy full support of the specification, claims, drawings, and abstract as filed. No new matter is included. Each claim recites distinguishable features. Claims 15 – 19 drawn to an unelected invention have been cancelled. Applicant respectfully solicits reconsideration.

(I) Applicant’s claims 24-25 stand rejected under 35 USC §112 concerning use the word “knitted” fabric vs. “woven” fabric for the following reason(s):

Regarding claims 24-25, the specification does not disclose each of the elasticized pieces comprises **knitted** fabric. Page 6 line 5 in the specification discloses each of the elasticized pieces comprises **woven** fabric. See also original claim 9.

Regarding claim 24, the specification does not disclose the outwardly facing surface of each of the garments comprises **knitted** fabric. Page 6 line 3 in the specification discloses the outwardly facing surface of each of the garments may comprise a **woven** fabric. See also

A closer look at applicant's specification-disclosure reveals that there is solid support within applicant's specification for use of "knitted" in the context of claims 24 – 25: claim 24 recites "*said outwardly facing surface of each said garments comprises a knitted fabric; said area of releasable fasteners each comprises an area having tiny flexible hooks for engagement with mating loop fabric; said under-layer comprises a foam lining; and each of said elasticized pieces comprises a foam-lined knitted fabric*" and claim 25 recites "*said first of said elasticized piece comprises a foam-lined knitted fabric*". Applicant's specification states, as follows (emphasis added):

"The unique system of elasticized upper- and lower-torso and limb garments, and elasticized pieces, each of which outlines a unique shape cut from an elasticized, foam-lined fabric that has been selected for its ability to remain stable on the skin surface, and to ventilate, allowing for skin and body temperature regulation. The garments may be worn directly on or next to the skin, or over a thin, close-fitting undergarment of cotton or other suitable lightweight material, and under regular attire, providing the wearer an outer flexible 'field' (or second skin) under which is a low-(or non-)slip inner surface. The outer 'external skin' functions as a stable field to which elongated elasticized pieces can be temporarily adhered in any configuration [p. 1 of applicant's published specification]."

"Fabric as used herein includes cloth and any other flexible material made, woven, knitted, intermingled, etc., natural or synthetic fibers and/or filaments, whether thermal energy is applied to produce the fabric, and whether the fibers or filaments are made, into threads, cording, yarns, etc., prior to fabricating the fabric. [p. 9 of applicant's published specification, under the section entitled "Detailed Description of Embodiments Depicted in the Drawings"]"

"As is well known, VELCRO® brand nylon fasteners consist of two mating NYLON components: hooks and loops (for reference, see [www.velcro.com](http://www.velcro.com)). The woven hook tape consists of tiny, flexible "hooks" which engage with a mating loop tape comprised of small, soft woven or knitted "loops." When pressed together, the resulting closure is adjustable and provides a secure releasable mechanism of fastening. ... [p. 2 of applicant's published specification]."

"Releasable fasteners may be any mechanism suitable for releasably securing elasticized pieces and compatible with the outwardly facing surface fabric selected, such

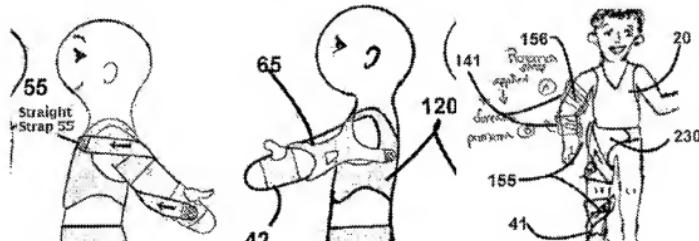
as: an area having tiny flexible hooks for engagement with mating loop fabric (e.g., VELCRO® NYLON hook-type tabs, sections of VELCRO® taping or ribbon, etc.); [p. 6 of applicant's published specification]....”

Applicant's use of the words woven and knitted is consistent with well accepted uses. For example, these words are defined in the popular online Encarta Dictionary, English (North America) which defines knit and knitted as “*interlock yarn loops, transitive and intransitive verb* to interlock loops of yarn, using either long needles or a machine, or make a garment or other item by this method” and defines woven as “*created by weaving, made or manufactured by the process of weaving*” with weaving defined as “*make something by interlacing strands, transitive verb to make something by interlacing strands or strips of any material*.”

(II) Many of applicant's claims stand rejected under 35 USC §112 for use of the phrase “a plurality of elasticized pieces” and reciting use of a “first” thereof, without setting forth specifications concerning structural cooperative relationships of the “non-first elasticized” pieces and the garments. Clarifications to several of the claims have been made.

(III) Concerning the rejections under 35 USC §102(b) using a new reference, Da oud et al U.S. Pat. 5,144,694 (not cited by the examiner earlier) disclosing a vest and shorts having pockets to hold exercise weight packets, (VI) rejecting a few claims under 35 USC §103(a) using Da oud et al U.S. Pat. 5,144,694, in view of another reference not cited earlier, Bracken, U.S. Pat 5,561,932, disclosing sizing indicia that provides finished sizes for pants; and (V) rejecting a several claims under 35 USC §103(a) using Da oud et al U.S. Pat. 5,144,694, in view of an earlier-cited reference, Phillips, Sr. et al, U.S. Pat. 4,843,647 directed to a baggy cold weather shirt, applicant offers the following.

Applicant's figures 26B, 27A and 29 are reproduced, below, for handy recall-reference, here:



By way of comparison, each cited reference falls short of claimed combinations. Furthermore, not only is there no suggested teaching to combine references, any attempted combination of features therefrom would destroy functionality of applicant's claimed features.

Daoud et al 5,144,694 exercise apparel has multiple pockets 40, 42, 50, 52, 54, 72, 74, 80, 82, to hold weight packets 16, 18, 100:

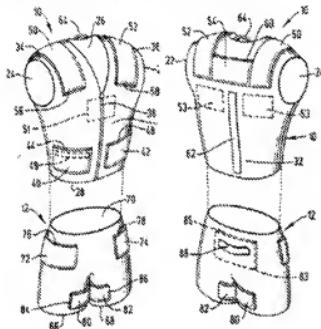
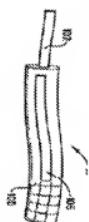


FIG. 1

FIG. 2

Bracken's 5,561,932 garment indicia strip 10 (shown below) has repeated sizing information to replace hangtags of folded garments (pants). Bracken's indicia strip has no size-tailoring function, at all; it is applied to garments that have been sized and finished. No therapeutic objective is disclosed by Bracken's garments (slacks/pants). Even if an artisan *might* be led to combine Bracken with Daoud et al, placing a Bracken finish-size label on Daoud's exercise pants would provide no size-tailoring functionality.



Col 8, lines 25–53 of Daoud et al's exercise apparel with weight pockets discloses that the weight packet 100 extending from spine strap 14 is "allowed to *freely slide* in the vertical direction within loop 88 so as not to restrict stretching or bending of the wearer's spine." According to Daoud, spine strap 14 is attached to the back of vest 10 along a strip of loop type fastening material 62 fixed along the center of the back of vest 10 in a manner that permits elongated weight packet 100 to extend vertically down the wearer's spine; col. 5, lines 40–42 states "A corresponding strip of the other of the hook or loop fastening material extends along the center of the back of the vest garment . . ." Lower end of weight packet 100 remains free to move, guided by loop 88 of pants 12, in a spinal direction. Col. 10, lines 13–16 suggests "strap 14 is secured to vest 10 and pants 12 by engaging hook material 106 with loop material 62 (on back panel 32 of vest 10) and by tying strap 102 to loop 64 [at the neck] of vest 10" the only interpretation that makes sense follows: Strip 62 only extends down the center of vest 10, strap 102 may be tied to neck loop 64, material 106 attaches to strip 62 along the vest, with the weight packet 100 free within loop 88. Col. 10, line 17 states "[s]trap 104 may be tied to loop 88 of pants 12;" however, no strap 104 is shown. Spine strap 14 does not attach to pants 12, but remains free from attachment.

Reproduced below: col 8, lines 25 – 53, Daoud et al (left), and col 10, lines 5 – 35 (right-hand):

25 As shown in FIG. 2, pants garment 12 is provided with a loop 88 arranged on the back of the pants. As will be described in further detail below, loop 88 is provided for further securing and guiding spine strap 14 in an embodiment wherein vest 10, pants 12 and spine strap 14 are employed in combination. That is, the lower end of elongated weight packet 100 of spine strap 14, upon securing spine strap 14 to vest 10, is inserted through loop 88. In this manner, spine strap 14 is further held against the wearer's spine. However, the lower end 35 of packet 100 will be allowed to freely slide in the vertical direction within loop 88 so as not to restrict stretching or bending of the wearer's spine. Thus, loop 88 guides the lower end of packet 100 for movement in the vertical direction as the wearer's spine is bent, unbent, 40 stretched and compressed during physical activities.

As an alternative embodiment to the use of pockets, each pocket on the vest 10 or pants 12 may be replaced with a patch of hook (or loop) type fastening material (not shown). In such an embodiment, the weight packets are each provided with a patch of loop (or hook) type fastening material designed to engage and secure with a patch of loop type material provided on vest 10 or pants 12. In this manner, weight packets 16 and 18 may be releasably secured to vest 10 or pants 12, in 45 similar positions and arrangements as shown in FIGS. 1 and 2, merely by engaging the patches of hook and loop materials on the vest or pants and on the weight pack-

5 FIG. 3 shows a spine strap 14 according to an embodiment of the invention. Strap 14 comprises an elongated weight packet 100. A thin, flexible strap 102 extends from an end of elongated weight packet 100, in the elongated direction of packet 100. A strip of hook 10 type fastening material 106 extends along the length of elongated weight packet 100, in the elongated direction thereof.

According to an embodiment of the invention, strap 14 is secured to vest 10 and pants 12 by engaging hook material 106 with loop material 62 (on back panel 32 of vest 10) and by tying strap 102 to loop 64 of vest 10. Strap 104 may be tied to loop 88 of pants 12. In this manner, strap 14 is secured and extended along a wearer's spinal cord. In an alternate embodiment, hook material 20 may be provided on vest 10 and loop material may be provided on elongated weight packet 100.

A further embodiment includes fastening means (such as hook and loop material, clips, snaps, buckles or the like) on thin strap 102 to fasten strap 102 through loop 25 64. For example, a patch of hook or loop type fastening material (not shown) may be provided on strap 102 and a patch of the other of the hook and loop material (not shown) may be provided on elongated weight packet 100 (e.g. on the opposite side of packet 100 with respect 30 to the side on which material 106 is provided). Thin strap 102 may be secured through loop 64 by extending strap 102 through loop 64 and engaging the patch of hook or loop material on thin strap 102 with the patch of hook or loop material on elongated weight packet

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**Rejections under 35 USC §102 |Anticipation & §103 |Obviousness – Legal Summary**

As we know: "For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference . . . These elements must be arranged as in the claim under review . . .," *In re Bond* (Fed. Cir. 1990). The Federal Circuit has reiterated that "[t]here must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention, [Scripps Clinic & Research Foundation]". A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, every limitation of the claim. See *Verdegaal Bros., Inc. v. Union Oil Co.* (Fed. Cir. 1987). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.* (Fed. Cir. 1986). An anticipation rejection under §102 can stand against a pending claim *only* if a single piece of prior art discloses a combination including *each* element of the pending claim such that each prior art element is identical to a corresponding, similar structurally-arranged and operationally substantial equivalent element of the pending claim. This is not the case, here. For reasons enumerated, each claim includes features not disclosed in any reference cited.

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *JKS Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734, 82 USPQ2d 1385, 1391 (2007). The Supreme Court continued "[f]ollowing these principles may be more difficult in other cases than it is here because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement." *Id.* The Court explained, "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *Id.* at 1740-41, 82 USPQ2d at 1396. The Court noted that "[i]o facilitate review, this analysis should be made explicit." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness").

Further, while precedent from the federal courts has shifted somewhat, in certain aspects, toward providing greater flexibility to examiners in rejecting claims during examination, it is still

impermissible to apply hindsight in combining references or when using artisan general technical knowledge to draw conclusions in support of rejections. Here, it is *not* a case of a substitution of one element—for instance, a mechanical actuator device replaced by a processor-driven device to perform the same function—as was the case set out by the Federal Circuit where it concluded, upon application of *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007) that it would have been obvious to combine (1) a mechanical device for actuating a phonograph to play back sounds associated with a letter in a word on a puzzle piece with (2) an electronic, processor-driven device capable of playing the sound associated with a first letter of a word in a book. See *Leapfrog Ent., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161, 82 USPQ2d 1687, 1690-91 (Fed. Cir. 2007) (“[a]ccommodating a prior art mechanical device that accomplishes [a desired] goal to modern electronics would have been reasonably obvious to one of ordinary skill in designing children's learning devices”). And, while *KSR* may foreclose (during prosecution of a patent application) narrow, open-and-shut arguments from an applicant that are based solely on the absence of specific expressed (or, written) teaching or suggestion in the cited references to produce the claimed combination—that is not the case where an inventor – such as the applicant – is faced with complex and unordinary design issues.

#### Summary and Request for Reconsideration

The garment system claimed in applicant's pending claims is structurally different and unobvious from that disclosed or contemplated by Daoud et al. Regarding rejections under 35 USC §112 (use of the terms “knitted” and “plurality of separate elasticized pieces”, i.e., structural relationship with what the examiner has deemed “non-first” pieces and the garments), clarification has been made to claims in a manner consistent with suggestions made. Turn next to the use of Daoud et al. against applicant's claims. For example in claim 1, as amended, applicant claims a therapeutic garment system comprising:

elasticized wrap-around first and second unitary style garments for donning and releasably securing in a close-fitting fashion at generally different areas of the body;

each of said unitary style garments comprising an outwardly facing surface a substantial portion of which is adapted for accepting an area of releasable fasteners, and an under-layer having an inwardly facing surface to resist slippage when donned; and

first and second separate elasticized pieces, each of said separate pieces comprising at least one of said areas of releasable fasteners for application of said piece onto said portion of said outwardly facing surfaces;

wherein:

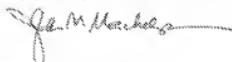
said area of releasable fasteners of said first elasticized piece releasably applied against said portion of said outwardly facing surface of said first and second garment, interconnects said first elasticized piece with said first and second garments in an operative therapeutic configuration; and

said second elasticized piece adapted to be releasably applied against said portion of said outwardly facing surface of either said first garment, said second garment, or both said first and second garment.

Da oud et al's options for placement of spine strap 14 on either vest 10 or pants 12 is limited to the strip 62 on vest 10: spine strap 14 cannot be placed anywhere substantially over the whole of an outwardly facing surface of vest 10. Furthermore, Da oud et al's spine strap 14 does not attach to pants 12, but remains free from attachment thereto. Spine strap 14 is intended to remain 'free' from application to pants 12, whereas applicant claims recite that an "*area of releasable fasteners* of said first elasticized piece *releasably applied against* said portion of said outwardly facing surface of said *first and second garment*, interconnects said first elasticized piece with said first and second garments in an operative therapeutic configuration." This is so that, as explained by applicant in the specification: "Strapping application(s), using the unique elasticized pieces according to the invention, may be configured to replicate gentle, non-forced manual correction that a clinician can apply to a wearer's posture, balance, or limb motion." Nowhere in applicant's specification or drawings is it suggested that "releasably applied" means hanging freely atop a garment. Such a configuration would defeat the purpose of applying applicant's unique elasticized pieces.

Upon closer look, one can appreciate that each of applicant's pending claims recite patentable subject matter. Da oud et al stops short of the innovation claimed in applicants' independent claims. Cited combinations of Da oud et al. and Bracken or Phillips Sr., et al. make little sense based on the limited structures of the garments disclosed therein, as against the complex therapeutic issues addressed by applicant's invention. And, although each dependent claim depending from an independent claim containing patentable subject matter is also considered patentably distinct by way of inclusion of features of a respective patentable independent claim, applicant's dependent claims include further unique limitations. Favorable reconsideration is, once again, respectfully solicited.

Respectfully submitted this 20<sup>th</sup> day of January 2011



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